



JUDICIAL **SYSTEM** MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO **SISTEMA** JUDICIAL

Case Summary

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Dili District Court Case Summary
February 2011

Just like previous editions, this summary of hearing conducted at the Dili District Court is intended to provide information on cases that were heard during February 2011.

This summary is based on monitoring conducted by JSMP in cases heard by the Dili District Court in February.

Based on monitoring conducted by JSMP, crimes have often occurred without a clear motive. However, there is also a tendency for people to occasionally commit a crime due to a personal motive. JSMP realizes that most people don't understand or are not aware of the laws that prevail in this country. Nevertheless, the principle of Assumption of Knowledge About the Law¹ states that it is assumed that all citizens are aware of all of the laws that are in force from the time a law is enacted, even though in reality they may have never even heard about that law coming into force.

The following summary relates to hearings conducted in the Dili District Court between 2– 22 February 2011.

1. Case of Sexual Coercion: No. 208/C.ord/TDD/2010

On 2 February 2011, the Dili District Court conducted a trial in a case of suspected sexual coercion involving the defendant HdS and the victim LdS. During the hearing the victim did not provide accurate testimony about what she experienced. The victim's testimony was inconsistent and the judges were often confused.

¹ Assumption of Knowledge About the Law is a principle of law which is used in the Indonesian language (*Fiksi Hukum*) to mean that there is an assumption that all citizens are aware of the laws in force even if they have never heard of a law after it has been enacted and published in the State gazette.

The hearing starting in the morning and continued in the afternoon. However, because the victim's testimony was unclear the prosecutor recommended that the defendant be given a lenient penalty. The prosecutor explained that even though he was responsible for presenting the criminal charges, and the victim had suffered or been harmed in this case, the victim herself had not told the truth to the court from the beginning of the trial until the end.

Article 14 of the Criminal Procedure Code² states that in matters that carry a penalty in excess of five years, the trial will be presided over by a panel of judges. Even though the panel conducted this trial, the court was unable to gather sufficient evidence, although the prosecutor had charged the defendant with sexual coercion as set out in Article 171 of the Timor-Leste Penal Code. The prosecutor stated that sexual violence is an act that violates the individual rights of a person and also the morals that exist in Timor Leste, therefore the prosecutor used his authority to charge the defendant with the appropriate crime. However, due to the lack of strong evidence, in particular the victim's testimony that was unclear about the facts, the prosecutor requested the court to acquit the defendant. The public defender agreed with the prosecutor's request to acquit the defendant.

NB: The decision was read out on 07/2/2011 at 14:00 (The defendant was acquitted).

2. Case of Rape - No. 18/C.ord/ 2003/ TDD

On 3 February 2011 the Dili District Court conducted a hearing in a case of rape that occurred, in Aimaek, Taibesi. The case allegedly occurred on 4/11/2002. The prosecutor stated in his indictment that was read out during the hearing by the Dili District Court that at the time of the incident the defendant MdF called the victim AdF to his home which was located in a secluded plantation. The defendant ordered his young daughter Francisca to go and buy sugar from a place that was a long way from the plantation, then the defendant forced the victim inside the house and raped the victim with force. The victim could not scream or resist because the defendant threatened the victim with the following words: *"don't tell anyone, if you do I will kill you"*. Because of the threat the victim did not tell anyone. The defendant was the step-father of the victim.

After 5-6 months the case was reported to the police after the victim's mother separated from the defendant. Previously the victim lived with the defendant when she was still young. The victim was living with the defendant because he had married her mother. Then after the incident the victim's mother separated from the defendant and married another man. Therefore, the victim went and lived with her mother.

With great sadness the victim told the court about what had occurred the previous year. The victim explained that at that time of the incident the defendant forced her inside the house and removed her clothing and then raped her. She could not resist because the defendant threatened her with violence.

Based on monitoring conducted by JSMP, the defendant exercised his right to remain silent during the trial. The defendant did not want to speak because all of the relevant

² The function of a panel of judges is to try criminal cases that carry a penalty in excess of five years.

information had been provided and included in the prosecutor's indictment. After that, the mother of the victim appeared as a witness and testified to the court that she was aware about the poor behavior of her husband when they were still living together. The witness testified that the defendant did not treat her children very well. He often maltreated the victim, was angry in many ways and made lots of threats. However, in relation to the alleged rape of the victim, the witness testified that she didn't know because she was not there at the time the incident occurred.

The prosecutor concluded that some of the facts had been proven during the trial whilst other facts had not been proven. Even though the defendant exercised his right to remain silent and the witness also did not provide clear testimony the victim testified with a sad heart what happened at the time of the incident. This was the truth, and a step-father should not do such a thing to his step-daughter.

Therefore the prosecutor requested the court to consider the matter carefully and sentence the defendant to 6 years imprisonment. The prosecutor recommended that the defendant be found guilty in violation of Article 285 of the Indonesian Penal Code, because this case occurred when the Indonesian Penal Code was still in force. This article provides for a maximum imprisonment of 12 years.

The public defender rejected the prosecutor's charges and argued that even though the victim explained that the defendant forced her to have sexual intercourse, there was no medical document in the case file. Therefore the public defender requested for the court to acquit the defendant if the court was not convinced about the prosecutor's charges.

NB: The decision was read out on 17/2/2011, at 14:00.

3. Case of light maltreatment; No. 15/Sum/TDD/2011

On 3 February 2011, the Dili District Court conducted a hearing in a case of light maltreatment which occurred on 24 January 2011, in the Lequidoe Village Office, Aileu. The defendant FC committed maltreatment against the victim AC in relation to a land dispute. Prior to the incident the defendant and the victim argued about the ownership of a piece of empty land to be used to build a house. The defendant claimed that the land was passed on down by his grandmother and therefore he had the right to build a house on that land. Whereas the victim, who was the village chief, responded by saying that the land in dispute was State property and no private house could be built on that land, and that it could only be used for public purposes.

Based on the decision read out by judge Alvaro Freitas regarding the facts that had been proven in the trial, the court was convinced that there was a conflict between the defendant and victim over land, and that the defendant had maltreated the victim (the village chief) by striking him above the eye which caused swelling and made the victim fall to the ground.

Pursuant to the elements of Article 145 of the Criminal Procedure Code, the court ordered the defendant to pay compensation of USD \$ 210, and ordered the defendant to fulfill his obligation to pay the compensation within five months at the rate of US\$ 1 per day until the full amount is paid. Articles 75 and 77 of the Penal Code provide for fines as an alternative punishment.

4. Case of serious maltreatment against a partner; No. 307 /C.ord/2010/TDD

On 8 February 2011 the Dili District Court conducted a hearing in case No. 307/C.ord/2010/TDD involving the defendant LdS who committed serious maltreatment against the his partner, the victim NL. The incident occurred in Fatuhada on 4 Augusts 2010.

The trial was presided over by judge Maria Naterçia Gusmão, SH, and the public prosecution service was represented by Aderito Tilman, SH and the public defenders officer was represented by Laura Valente Lay, SH. As per usual, the court read out the prosecutor's indictment to the defendant. The prosecutor charged the defendant for committing serious maltreatment against his partner. As a result of his actions the victim suffered swelling and injury to her face, in the area above her eye. As a consequence the victim could not carry out her daily activities for a whole week. In reference to these facts the prosecutor charged the defendant with articles 154 and 157 of the Penal Code.

However, the defendant testified to the court that the injury suffered by the victim was not the result of maltreatment carried out by the defendant, but because she collided with a door when they were both trying to grab a mobile telephone.

The victim testified that the defendant often treated her badly. The defendant also often spoke to her in an offensive and harsh manner, treated her indecently and inhumanely. This case is considered a serious crime because it carries a penalty between 2-6 years imprisonment. However the trial was presided over by single judge Maria Natercia who realized that the matter needed to be dealt with by a panel of judges. Therefore the judge announced that the trial would be reconvened on 1 March 2011 before a panel of judges who would carefully examine the classification and complexity of the case to be heard.

5. Case of light maltreatment; No. 31/C.ord/2011/TDD;

On 14 February 2011, the Dili District Court conducted a hearing in a case of light maltreatment, Case No. 31/C.ord/2011/TDD. The incident occurred on 11 February 2011, in Hatolia, Ermera. Before the hearing commenced, the judge asked if the two parties wished to settle the matter, however the victim decided to have the case heard by the court.

This case involved four defendants who were all members of the same family. During the hearing that was scheduled to hear witness testimony the defendants rejected the charges made by the prosecutor against them, and the four defendants wanted to explain what had actually occurred.

Firstly the defendant BB testified that at the time of the incident he was holding a pipe but the police immediately confiscated the pipe from him and therefore he was unable to use it to hit the victim. Therefore the defendant rejected the indictment that stated that he used the pipe to hit the victim. However, the other three defendants, AB, FB and SB admitted that they threw stones at the victim because the victim chased them with a machete to the edge of a cliff and they had to do something in self defence.

The three defendants stated that the incident occurred because the victim kicked the roulette table of the defendant during a ceremony to show respect for a recently deceased person that was held the day before.

The victim stated that he kicked the roulette table belonging to the defendant because he asked them to stop playing roulette and to help prepare a coffin for the deceased, but they refused. Therefore the victim was upset and kicked the roulette table belonging to the defendant.

The witness JA, who is a police officer, was there when the incident occurred and he testified that when the incident occurred he was together with a fellow police officer and intervened and confiscated the pipe that was in the hands of the defendant BB, however because there were only two police officers there, they were unable to prevent the incident and control the situation. The prosecutor doubted the veracity of the testimony given by the witness, who as a police officer allowed the crime to occur. The prosecutor stated that the police should have made an effort to prevent the incident from occurring. They had weapons such as pistols and batons, however they did not use them and allowed the crime to occur in the community which resulted in a person being victimized.

In his final recommendation of sentence the prosecutor requested for the court to hand down a suspended sentence against the defendant pursuant to Article 145 of the Penal Code.

The public defender requested for the court to carefully consider the facts of the case and uphold justice because during the trial the defendants had admitted their mistakes and stated that they had reacted in self-defence to the attack that was directed towards them.

The decision was scheduled to be announced on 23 February 2011, at 09:30 in the Dili District Court.

6. Case of light maltreatment, No. 28/C.ord/TDD/2010

On 15 February 2011, the Dili District Court conducted a hearing in a case of light maltreatment, namely Case No. 28/C.ord/TDD/2010. The incident occurred on 9 February 2009, at approximately 00:03 in the village of 1 November, Vilaverde, Dili.

According to the prosecutor's indictment the incident occurred with the defendant CML and one of his friends were sitting in front of a Christmas tree and suddenly the defendant struck the victim RA. The trial was conducted in the absence of the defendant and victim.

The hearing was conducted to hear witness testimony because the court had already summoned the parties twice but they had not responded so the court decided to move forward with the trial in their absence. The prosecutor and public defender agreed for the trial to continue with the hearing of testimony from the witness CL.

The witness CL testified that the incident occurred at midnight. The witness and his family ran out from their house because they heard people striking electricity poles very loudly and many people were shouting and striking the poles on the main road. However when the judge asked if the witness actually saw the incident and whether or not the defendant maltreated the victim, the witness responded that he saw blood but that was on the following day.

The trial continued with the prosecutor providing a recommendation of sentence because there were no further witnesses. In his recommendation the prosecutor referred to the testimony of the witness CL to reinforce the charges that a crime was committed on 9 February 2009, at approximately 00:30.

The public defender rejected the charges of the prosecutor because he believed that the prosecutor had not provided sufficient evidence or other documents in the case file to show that the defendant had hit the victim. Therefore he asked the court to acquit the defendant. After hearing their final statements the court immediately asked the prosecutor and public defender to reach a conclusion and decide on the matter so that another hearing would not be required.

Judge João Barreto, SH read out the decision and stated that even though the hearing was conducted in the absence of the defendant and victim and only the witness was present, the court had still managed to establish the facts. The court believed that there was insufficient evidence to show that the defendant had maltreated the victim and caused bleeding. This was based on the testimony of the witness CL who testified that he was at the scene but did not see who hit the victim because it was dark. The witness also testified that he saw the blood the following morning, but not on the night of the incident.

Therefore the court concluded that there was insufficient evidence and decided to acquit the defendant.

7. Case relating to paternity, No. 59/P.Civ/2008/TDD)

A hearing in this case was conducted on 22 February 2011 and was presided over by single judge Maria Natércia Gusmão, SH. In this case the respondent Mr. Casi Pereira dos Santos was represented by his lawyer Marcia Sarmento, SH from the Public Defender's Office. The plaintiff in this case, Ms. Zélia Pereira, was not present and was represented by her lawyer.

Efforts were made to have the two parties (plaintiff and respondent) reach an agreement in this case. No written document was presented to the court; however the two parties explained that they had reached an amicable settlement.

The first hearing in this case took place on 13 December 2010, and was initiated by the plaintiff Zelia Pereira because the respondent did not acknowledge that the child born to the plaintiff was his child, or in other words the respondent did not acknowledge the child. However in the second hearing the respondent acknowledged paternity of the child in question.

After hearing from the two parties the court decided to settle the matter. The court asked the respondent to provide alimony and to provide appropriate attention to the child.

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